

Special Civil Application No 696 of 1988

Date of decision: 15/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIHAR BHAGUBHAI vs STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the Petitioner
Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No.3 herein) on 23rd January 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 28th December 1987 in Appeal No. Surat-543 of 1984 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 3 declared the holding of the petitioner to be in excess of the ceiling limit by 8523.69 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. That form was duly

processed by respondent No. 3. After observing necessary formalities under sec. 8 of the Act, by his order passed on 23rd January 1984 under sec. 8(4) thereof, respondent No. 3 declared the holding of the petitioner to be in excess of the ceiling limit by 8523.69 square meters. Its copy is at Annexure H to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Surat-543 of 1984. It appears that the petitioner herein made written submissions therein. A copy thereof is at Annexure I to this petition. By the order passed on 28th December 1987 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure J to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure H to this petition as affirmed in appeal by the appellate order at Annexure J to this petition.

3. It transpires from the order at Annexure H to this petition that the lands bearing survey Nos. 51/3 and 51/2 were shown to be used for agricultural purposes. It further transpires therefrom that the land bearing survey No.. 51/3 situated at Karanj was admeasuring 18818 square meters. A permission under sec. 21(1) of the Act was granted for the area of 15176 square meters out of it. That would certainly be after coming into force of the Act. Relying on the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465, learned Advocate Shri Sanjanwalla for the petitioner has submitted that the nature of the land as on the date of coming into force of the Act will have to be seen. It has been urged on behalf of the petitioner that no master plan answering its definition contained in sec. 2(h) of the Act was in existence and the land in question together with another parcel of land bearing survey No.. 51/1 admeasuring 8094 square meters was used for agricultural purposes and the area of both these lands should be excluded from the holding of the petitioner. Learned Advocate Shri Sanjanwalla for the petitioner has also pressed into service the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567 for the purpose of exclusion of the constructed properties from the petitioner's holding. As against this, learned Assistant Government Pleader Shri Patel for the respondents has submitted that no material was brought on record for showing that the construction of industrial shed was in existence prior to coming into force of the Act. He has further urged that, since the scheme under sec. 21(1) of the Act was sanctioned for survey No.. 51/3 situated in Karanj, it must be presumed that agricultural operations were not carried on therein on the date of coming into force of the

Act. It has therefore been urged that the impugned orders call for no interference by this court in this petition under articles 226 and 227 of the Constitution of India.

4. It cannot be gainsaid that the applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) will depend upon the finding whether or not any master plan answering its definition contained in sec. 2(h) of the Act with respect to the lands in question existed on the date of coming into force of the Act and what the situation of these lands was therein. Besides, it will have to be ascertained whether or not agricultural operations were in fact carried on therein at the relevant time. For the purposes of applicability of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra), it will have to be ascertained whether the construction shown to be in existence prior to coming into force of the Act was authorised.

5. Since the aforesaid two binding rulings of the Supreme Court did not see the light of the day when respondents Nos. 3 and 2 respectively passed the orders at Annexure H and J to this petition and since the law declared by the Supreme Court in its aforesaid two binding rulings is required to be applied to the case on hand, it would be necessary to remand the matter to respondent No. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid two binding rulings of the Supreme Court and in the light of this judgment of mine. The impugned orders at Annexures H and J to this petition will have therefore to be quashed and set aside. It will be open to the petitioners to canvass all other points which are canvased in this petition at the time of hearing after remand.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.3 herein) on 23rd January 1984 under sec. 8(4) of the Act at Annexure H to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th December 1987 in Appeal No. Surat-543 of 1984 at Annexure J to this petition is quashed and set aside. The matter is remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
